

**ENTERED**

March 14, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

GARY SWYCK,

§

§

Plaintiff,

§

VS.

§

CIVIL ACTION NO. 2:16-CV-489

§

LORIE DAVIS, *et al*,

§

§

Defendants.

§

**ORDER**

Plaintiff, proceeding *pro se*, filed this prisoner civil rights action on November 14, 2016. Pending is Plaintiff's Motion for Leave for a Physical Examination. (D.E. 30). Plaintiff moves, pursuant to Rule 35 of the Federal Rules of Civil Procedure, for a court order directing he be given a physical examination. This Motion is **DENIED**. Rule 35 provides, in relevant part:

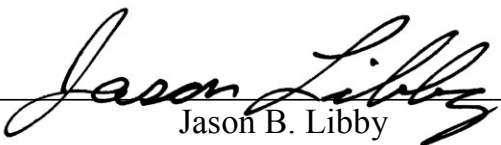
The court where the action is pending may order a party whose mental or physical condition-including blood group-is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. Fed. R. Civ. P. 35(a)(1). The court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

Plaintiff argues he should receive an MRI and a CAT scan. However, although a district court, pursuant to Rule 35, may under appropriate circumstances order a party to submit to a physical examination at the request of an opposing party, Rule 35 does not vest the court with authority to appoint an expert to examine a party wishing an

examination of himself. *See, e.g. McKenzie v. Nelson Coleman Corr. Ctr.*, 2012 WL 3779129, at \*2-3 (E.D. La. Aug. 31, 2012)(finding court had no authority under Rule 35 to order prisoner plaintiff's current custodian to present plaintiff or pay for an independent medical exam). Courts faced with this issue have consistently concluded that Rule 35 may not be used by an inmate plaintiff to secure either medical treatment for the plaintiff or to obtain expert witness testimony to advocate on the plaintiff's behalf. *See, e.g. Callegari v. Lee*, 2011 WL 175927, \*7 (N.D. Cal. Jan. 19, 2011)(citations omitted); *see also Cottle v. Nev. Dep't of Corr.*, 2013 WL 5773845, \*2 (D. Nev. Oct. 24, 2013)(citations omitted). "Although the plaintiff states that he is seeking an independent medical examination pursuant to Fed. R. Civ. P. 35(a), he is actually seeking a cost-free medical examination he hopes will support his claims...Rule 35 was not designed for this purpose." *McKenzie*, 2012 WL 3779129 at \*2. (citation omitted).

Therefore, Plaintiff's Motion for Leave for a Physical Examination is **DENIED**.

ORDERED this 14th day of March, 2017.

  
Jason B. Libby  
United States Magistrate Judge